

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

MARK FITZHENRY,

Plaintiff,

vs.

FESTIVA DEVELOPMENT GROUP, INC.,  
HERBERT H. PATRICK, JR., Individually,  
dba as Festiva, ETOURANDTRAVEL, INC.,

Defendants.

C/A No.: 2:16-cv- 3725-DCN-BM

**DEFENDANTS' NOTICE OF  
REMOVAL**

1. Please take notice that Defendants Festiva Development Group, Inc., Herbert H. Patrick, Jr., Individually, dba Festiva, and ETOURANDTRAVEL, Inc. ("Defendants"), pursuant to 28 U.S.C. §§ 1441 and 1446, hereby remove the above-entitled action from the Magistrate's Court of the State of South Carolina, County of Charleston, to the United States District Court for the District of South Carolina, Charleston Division. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1446.

2. This action was instituted by Plaintiff against Defendants by service of the Summons and Verified Complaint on October 23, 2016. This action is pending in the Magistrate's Court of the State of South Carolina, County of Charleston, Civil Case Number 2016CV1010600974.

3. The Notice of Removal is filed within thirty (30) days of receipt of the Complaint by Defendants, pursuant to 28 U.S.C. § 1446(b). A copy of the attached Summons and Complaint constitute all process and pleadings in this action. (Exhibit A).

4. The claim asserted against each of the Defendants in the Verified Complaint is for an alleged violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”).

5. Defendants are entitled to removal of this civil action to this Court, pursuant to 28 U.S.C. § 1331, upon the grounds of federal question jurisdiction. Federal question jurisdiction exists when an action presents a claim “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

6. The United States Supreme Court has found that the TCPA’s grant of jurisdiction to state courts does not deprive federal district courts of federal-question jurisdiction over private claims. *Mims v. Arrow Fin. Servs., LLC*, 132 S.Ct. 740 (2012).

7. Venue is proper in this District under 28 U.S.C. § 1446(a) because this District embraces the place where the removed action is pending.

8. Defendants will timely provide a copy of the Notice of Removal to the Magistrate’s Court of the State of South Carolina, County of Charleston.

9. Defendants have simultaneously served herewith Defendants’ Rule 7.1 Corporate Disclosure Statement, Defendants’ responses to Local Rule 26.01 Interrogatories and Defendants’ Answer to and Motion to Dismiss the Complaint.

WHEREFORE, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants hereby remove this matter from the Magistrate’s Court of the State of South Carolina, Charleston County, to the United States District Court for the District of South Carolina, Charleston Division.

s/Molly Hughes Cherry

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Molly Hughes Cherry – Fed ID No. 7067

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*ATTORNEYS FOR DEFENDANTS*

*FESTIVA DEVELOPMENT GROUP, INC.,*

*HERBERT H. PATRICK, JR., Individually, dba as*

*Festiva, ETOURANDTRAVEL, INC.*

November 23, 2016

Charleston, South Carolina

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing DEFENDANTS' NOTICE OF REMOVAL has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 23<sup>rd</sup> day of November, 2016.

Mark Fitzhenry  
10 Brigadier Drive  
Charleston, SC 29407

*PLAINTIFF PRO SE*

s/Molly Hughes Cherry

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